

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1056 of 1997

in

SPECIAL CIVIL APPLICATION No 5197 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 YES 2 TO 5 NO

NARANBHAI HAMIRBHAI PADHARIA

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR PB BHATT, AGP for the respondents.

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 14/10/97

ORAL JUDGEMENT

Appeal admitted. Mr. Bhatt, learned AGP appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing.

This appeal is filed against an order passed by the learned Single Judge in Special Civil Application No. 5197 of 1997, decided on August 6, 1997.

The appellant-petitioner was holding agricultural land admeasuring 119 Acres- 31 Gunthas at village kholadiad in Surendranagar District. After coming into force of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the Act), the appellant filled in the form regarding his holding. The Mamlatdar and Agricultural Lands Tribunal came to the conclusion that the petitioner was holding 11 Acres and 13 Gunthas of land in excess. The petitioner was therefore, asked to exercise his choice in accordance with the provisions of the Act so that possession of surplus land can be taken by the authorities under the Act. According to the appellant, he was not holding excess land and the provisions of the Act were not applicable. He, therefore, did not exercise option which was given to him. But the matter was then carried further by the appellant. In the High Court, the appellant succeeded and this court held that the appellant was not holding excess land. The matter was then taken by the authorities before the Apex Court by filing an appeal, which came to be allowed and the Apex Court held that the appellant was holding excess land and the provisions of the Act were applicable.

After the matter was finally decided against the appellant by the Supreme Court, the appellant made an application stating that since the land was declared as surplus and he had to hand over possession of surplus land to the Government and as he had not exercised option earlier, an opportunity to exercise choice be given to him. He further submitted that he was ready and willing to hand over possession of 6 Acres and 9 Gunthas of part of Survey No. 93/1 and 5 Acres and 20 Gunthas of part of Survey No. 78, totaling to 11 Acres and 31 Gunthas. The Deputy Collector, Wadhvan Sub Division, Surendranagar, by an order dated 31st March, 1997, asked Mamlatdar, Wadhvan to give an opportunity to the appellant to exercise choice to retain possession of land by complying with necessary formalities and to inform the authorities accordingly. It, however, appears that no such option was given to the appellant. Being aggrieved by that action, the appellant has approached this court.

When the matter was placed for hearing before the learned Single Judge, notice was issued and after hearing the parties, the learned Single Judge dismissed the petition. The learned Single Judge mainly relied on the fact that when the proceedings were initiated against the appellant under the provisions of the Act, an opportunity was given to him to exercise option regarding surrender of land and the authorities had specifically asked the appellant to exercise choice. He, however, refused to do so. Hence, according to the learned Single Judge, by not giving opportunity once again, no illegality was committed. There was no substance in the petition filed by the petitioner and accordingly it was dismissed.

On September 2, 1997, when the appeal came up for hearing, the following order was passed :

" Learned counsel for the appellant states that so far as declaration of surplus land is concerned, the point has been finally concluded by the Apex Court. He has filed the petition only with regard to choice under section 20. Notice returnable on 17-9-1997. D.S.permitted "

Mr. Raval, learned counsel for the appellant raised two contentions. Firstly, he contended that a right is conferred on the appellant by the Act of making choice of land and the said right cannot be taken away. It was open to the appellant to contend that he was not holding excess land and that in case he was holding excess land, he would exercise choice in favour of a particular survey number. But if it was not done at that time by the appellant contending that he was not holding excess land and ultimately when it was found that he was holding surplus land, the statutory right cannot be taken away from him. Secondly, he contended that in the instant case, after an application was made by the appellant in 1996, the competent authority i.e. Deputy Collector passed an order in favour of the appellant and directed the Mamlatdar, Wadhvan, to give option to the appellant, which was not done. According to him, Mamlatdar was subordinate to Deputy Collector and when an order was passed by a superior authority, Mamlatdar was bound by it and he cannot say that he would not give that opportunity as the appellant had not exercised the option earlier.

In the instant case , it is not necessary to express any opinion on submissions made by Mr. Raval as Mr. Bhatt, learned AGP under the instructions of Mr. R.D.Malek, Deputy Mamlatdar, Wadhvan, who is present in the court, states that the appellant will be given option and as per choice exercised by him as per his letter dated September 20, 1996, possession of surplus land will be taken .

In view of the above statement, Letters Patent Appeal deserves to be allowed and is accordingly allowed to the above extent. In the facts and circumstances of the case, no order as to costs.

Liberty to apply in case of difficulty. Direct service permitted.

JOSHI